1952

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File No. Bills IV /1952

Legal Deptt.

B. BRANCH

P.6(c)/1952

Subject:—

L D Vol No.

Bills IV of 1952

File No. Bills IV/1952

Gen. 194

A copy of the judgement of the Supreme Court in the Bhatia Co-operative Housing Society's case relating to what is known as the New Sitaram Buildings is sent herewith. The plot which was the subject-matter of the said case was leased by the Bombay Improvement Trust. The property of the Bombay Improvement Trust now vests in the Bombay Municipal Corporation. The Supreme Court holds that by the terms of the lease the demise is not only of the land, but also of the buildings standing thereon. In support of this conclusion the Supreme Court relies on various clauses of the lease which provide -

(1) that the lessee cannot on his own account use the building in any way he likes ,

(2) that if the premises are destroyed by fire or otherwise, the lessee must reinstate them,

(3) that on ~~fortune~~ forfeiture the lessor can re-enter on the land as well as buildings.

According to the Supreme Court all these considerations indicate that the lessor has the dominant voice and real ownership and his interest cannot be described as merely contigent. On these facts the Supreme Court held that the premises in question belonged to the ~~xxxxxx~~ local authority and under section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were exempt from its operation. Apart from the questio whether the view of the Supreme Court is correct or not the interpretation put by the Supreme Court on the lease will be the declared law and will under Article 141 of the Constitution be binding on all Courts. As though the above decision relates to the construction of the lease relating to land owned by the Bombay [redacted] cipal Corporation, it appears that the lessee

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leases relating to reclamation and other landsowned by Government are similarly worded. It is therefore necessary to amend the Bombay Rent Hotel and Lodging House Rates Control Act, 1947. In order to avoid unnecessary complications which may arise in consequence of the attempts of landlords of buildings on such lands, it is necessary that an Ordinance will have to be promulgated.

2. A tentative draft of the requisite Ordinance is prepared accordingly. In preparing the draft of the Ordinance, an opportunity has also been taken to insert a clause therein that the Rent Act applies to premises which are let to the Government by a local authority and vice versa, as a doubt has been raised on this point by the Bombay Port Trust.

3. In view of the importance of the question the Advocate General is requested to examine the draft Ordinance and to favour Government with his views in the matter at an early date. Copies of relevant forms of leases are enclosed for persual.

Sd. J.R.Dhurandhar.
13/11.

Additional Secretary to Government.

U.R. to Advocate General No. 1233/B Confl dated the 13th November 1952.

VGP. 3-7-56.

The draft of the Ordinance was discussed with the Advocate General. The Advocate General is of opinion that the present Ordinance should confine itself to the actual point decided by the Supreme Court. Accordingly it should only explain that the premises belonging to the Government or a local authority should be explained as including buildings erected on land taken on lease from the Government or a local authority. The Ordinance will have to be followed by an Act and it should then be considered whether it is necessary to include any other cases which by implication may or may not fall within the decision of the Supreme Court. The P.W.D. was asked to ascertain the views of the Bombay Municipal Corporation and the Port Trust and no reply seems to have been received I had a discussion with the Municipal Commissioner and in accordance with his suggestions based on the legal advice of his Solicitor, an addition has been made to the clause. As the matter is urgent, the draft of the Ordinance may be sent to the Government of India for the President's instructions and an early reply should be requested.

Sd. J.R.Dhurandhar.
19/11.

Additional Secretary to Government.

VGP. 3-7-56.

Seen by H+M (Law) & (Rhb).

Immediate. Letter.
Confidental.
No. BRA/2152-H.

Public Works Department
Bombay Castle (Bombay No 1.)
13th December 1952.

To

The Manager,
Government Central Press,
Bombay.

Subject:- Issue of an Ordinance.

Reference: Correspondence resting with this Department letter No. BRA/2152-H (Confidental), dated 10th December 1952.

2. I am to forward herewith a copy of Ordinance No. 1 of 1952 to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and to request you to publish the same in Bombay Government Gazette Extraordinary, dated 13th December 1952. The proof copy of the Ordinance will be examined in the Press by a Superintendent from the Legal Department.

3. 600 copies of the printed Ordinance may please to be supplied to this Department.

By order of the Governor of Bombay,

Sd. P. R. Waz

Assistant Secretary to the Government of Bombay
Public Works Department.

One copy of
Ordinance.

Copy with a copy of the Ordinance forwarded with compliments to the Legal Department for information.

VGP. 3-7-56.

ORDINANCES.

An Ordinance to amend the Bombay Sales Tax Act, 1946-

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 21586/B.
Bombay Castle, 22nd December 1952.

RESOLUTION: The Ordinance with the statement should be forwarded to the Manager, Government Central Press, Bombay for publication in the Bombay Government Gazette, dated the 22nd December 1952, as Ordinance No II of 1952.

2. The Ordinance with the statement should be translated in to Marathi, Gujarati, Kannada and Hindi (Devnagari script) and the translations should be published in the Bombay Government Gazette dated the 26th December 1952.

3. The Badates of the various publications should be reported to the Bombay Legislature Department, and the Legal Department.

By order and in the name of the Governor of Bombay.

Sd.

K.J.PATHARE.

Assistant Secretary to Government.

VGP. 3-7-56.

MOST IMMEDIATE STATE

GOVERNOR

BOMBAY.

28/23/Judl PRESIDENT APPROVES PROMULGATION OF BOMBAY SALES TAX ORDINANCE 1952 SUBJECT TO AMENDMENT SUGGESTED BY CENTRAL GOVERNMENT IN CLAUSE 10 (6) AND AGREED TO BY BOMBAY GOVERNMENT.

HOME

Assistant Secretary to the Government of India, Ministry of Home Affairs.

No. 28/23/52-Judl. New Delhi (2) the 13th Dec. 1952.

Copy by post.

(GULZAR SINGH ).
Assistant Secretary to the Government of India.

Attested.

Section Officer.

VGP. 3-7-56.